

Please enter the following amendments and remarks:

### **STATUS OF THE CLAIMS**

Claims 1-19 are pending in the Application.

Claims 1-19 have been rejected by the Examiner.

Reconsideration of the present Application is respectfully requested.

### **REMARKS**

Claims 1-7 and 11-19 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cowe (U.S. Patent No. 5,671,362). Claims 8-10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cowe (U.S. Patent No. 5,671,362) in view of Markham (U.S Patent Publication No. 2003/0158795).

35 U.S.C. §103(a) recites:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *MPEP 706.02(j)*.

**A. Rejections based on Cowe**

Claims 1-7 and 11-19 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cowe (U.S. Patent No. 5,671,362). Applicant respectfully traverses these rejections for at least the following reasons.

Applicant respectfully submits that the present rejection of independent Claim 1 is improper, at least because the present rejection cites one piece of art, namely Cowe, in rejecting each of the elements of Claims 1. Applicant respectfully submits that this is an improper § 103 rejection. To the extent Examiner intends to take official notice, Applicant respectfully requests that Examiner do so, and provide Applicant with relevant art in support thereof.

The present office action rejects Claim 1, in part, setting forth that:

During subsequent runs of program 300, the previous data matrix and item stack descriptive matrix are not re-initialized, but merely updated during the run to reflect the most current status of sensing grid 32.

In addition to the necessity of running initialization sequence 302 to initialize all above-referenced locations at the start of a first program run, initialization sequence 302 of all data locations in the current and previous data matrices and re-initialization sequence 304 of the current matrix to a high default value of "1" is important in this embodiment because low data locations having "0" value are flagged during a comparison made between the current and previous matrices and the flagged sensor 33 locations are used to properly update the item inventory map of the shelf to determine if an item has been moved, added to or removed from the shelf. *Col. 21, lines 30-46.*

Claim 1 recites the "receiv[ing] at least one attribute of at least one material flow item." The present application defines attribute to be "an object or information item, such as a programmable object, associated with, or belonging to, a specific location, time, office, or person, and is, in particular, capable of at least assisting in the unique identification of that item with which the attribute is associated." Specification page 5, lines 4 – 7.

Applicant respectfully submits that at least the attribute discussed and claimed in the present application is clearly not disclosed in the cited reference Cowe. Specifically in this regard, Cowe teaches a "shelf unit [that] outputs product traffic information." Col. 5, lines 27 –28. Cowe teaches that this monitoring is performed "by sensing the presence or absence of individual product items in storage on the shelf unit." Col. 5, lines 39 – 41. Applicant respectfully submits that the teaching in Cowe is directed solely to sensing whether something is in a certain location, instead of determining the details, i.e. "attributes", of what

something is and where it is as is claimed in the present invention. As such, in contrast to the teaching of Cowe, Applicant respectfully submits that the present application is directed to unique and specific identification of items and locations to allow for tracking thereof. See generally page 4 – 5. Applicant submits that this is distinct from determining whether an unknown item in a known location provides a requisite number of units to provide reordering information, as is done in Cowe. The present application thus involves unique, individualized tracking of items throughout a system by using the attributes of the item. See generally page 5.

Further, Applicant submits that Cowe fails to teach real-time tracking. The cited portion of Cowe requires the subsequent running of a program. Applicant submits that Cowe thus does not teach a substantially continuous and real-time inventory tracking. Instead, Cowe teaches a program which may be occasionally run to determine storage information. Applicant respectfully submits that the very nature of the present invention is a substantially continuous and real-time inventory monitoring system designed to track, identify, and know the whereabouts of a given individual inventory item during storage, during shipment, and upon receipt from, or sending to, a destination.

As set forth hereinabove, Applicant respectfully traverses the 35 U.S.C. § 103 rejection with respect to Claim 1 for at least the foregoing reasons. Similarly, Applicant respectfully submits that Claim 1 is patentably distinguishable over the prior art of record. Analogously, Applicant respectfully submits that Claim 2 – 7 and 11-13 similarly overcome the prior art, at least because of these Claims' ultimate dependence on patentably distinguishable base Claim 1. Further,

Applicant submits that because Claim 1 is patentably distinguishable over the prior art of record, the rejection set forth for Claims 8-10 is similarly overcome, at least in part because of these Claims' ultimate dependence on patentably distinguishable base Claim 1.

With respect to Claim 14, the present Office Action sets forth a rejection similar to that discussed hereinabove with respect to Claim 1, and thus Applicant respectfully traverses for the same reasons as set forth above with respect to Claim 1.

Additionally, the present office action sets forth that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cowe to include that said stations include a secondary and a tertiary station, because it appears that the claimed features do not distinguish the invention over similar features in the prior art, and the teachings of Cowe would perform the invention as claimed by the applicant with said stations being of any type." *Office Action @ 4*. Applicant respectfully submits that such a modification of Cowe would substantially alter the method of operation of the system of Cowe to the point of creating a new invention. Cowe does not teach a "tracking" system, but rather teaches a mere "monitoring system", operative only at a point of storage. In this regard, Cowe teaches:

An item-detecting subsystem comprises a sensing grid 32, covering the bottom panel of shelf 20 which sensing grid 32 comprises an array of sensors 33 responsive to the presence of product items 33. Sensors 33 are preferably binary and provide a digital

output. However, if a proportional weight-related signal or other graduated signal output is desired, sensors may be analog and the output signal can be converted to digital for processing. *Col. 7, lines 53-60.*

In light of this, Applicant respectfully submits that Cowe does not teach a tracking system, but rather merely senses whether an unspecified box or unit is sitting on shelves at the certain location. In stark contrast, the present invention teaches a inventory tracking system that includes points of origin and points of departure. *See Figure 3 and related description.*

Applicant thus respectfully submits that Claim 14 is not obvious over the prior art cited for at least the reasons set forth with respect to Claim 1 and further for the reasons set forth hereinabove.

With respect to Claim 15, the present Office Action sets forth a rejection similar to that discussed hereinabove with respect to Claim 1. Applicant respectfully submits that Claim 15 is similarly not obvious over the prior art cited for at least the reasons set forth with respect to Claim 1.

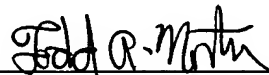
With respect to Claim 16, the present Office Action sets forth a rejection similar to that discussed hereinabove with respect to Claim 1. Applicant submits that because Claim 16 is patentably distinguishable over the prior art of record for at least the reasons set forth with respect to Claim 1, the rejection set forth for Claims 17-19 is similarly overcome, at least in part because of these Claims' ultimate dependence on patentably distinguishable base Claim 16.

Wherefore, Applicant respectfully requests reconsideration and removal of the 35 U.S.C. 103 rejections, as Claims 1, 14, 15 and 16 are patentably distinguishable over the prior art of record. Applicant further submits each of Claims 2 – 13 and 17 – 19 is similarly distinguishable over the prior art of record, at least by virtue of these Claims' ultimate dependency from a patentably distinct base Claim 1 or 16.

### **Conclusion**

Applicant respectfully requests reconsideration of the present Application in light of the reasons set forth herein, and a Notice of Allowance for all pending claims is earnestly solicited.

Respectfully Submitted,



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